

SENTENCING RULES

California Rules of Court

Rule 4.414. Criteria affecting probation

Criteria affecting the decision to grant or deny probation include:

(a) Facts relating to the crime, including:

- (1) The nature, seriousness, and circumstances of the crime as compared to other instances of the same crime.
- (2) Whether the defendant was armed with or used a weapon.
- (3) The vulnerability of the victim.
- (4) Whether the defendant inflicted physical or emotional injury.
- (5) The degree of monetary loss to the victim.
- (6) Whether the defendant was an active or passive participant.
- (7) Whether the crime was committed because of an unusual circumstance, such as great provocation, which is unlikely to recur.
- (8) Whether the manner in which the crime was carried out demonstrated criminal sophistication or professionalism on the part of the defendant.
- (9) Whether the defendant took advantage of a position of trust or confidence to commit the crime.

(b) Facts relating to the defendant, including:

- (1) Prior record of criminal conduct, whether as an adult or a juvenile, including the recency and frequency of prior crimes; and whether the prior record indicates a pattern of regular or increasingly serious criminal conduct.
- (2) Prior performance on probation or parole and present probation or parole status.
- (3) Willingness to comply with the terms of probation.
- (4) Ability to comply with reasonable terms of probation as indicated by the defendant's age, education, health, mental faculties, history of alcohol or other substance abuse, family

background and ties, employment and military service history, and other relevant factors.

(5) The likely effect of imprisonment on the defendant and his or her dependents.

(6) The adverse collateral consequences on the defendant's life resulting from the felony conviction.

(7) Whether the defendant is remorseful.

(8) The likelihood that if not imprisoned the defendant will be a danger to others.

Rule 4.421. Circumstances in aggravation

Circumstances in aggravation include:

(a) Facts relating to the crime, whether or not charged or chargeable as enhancements, including the fact that:

(1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness.

(2) The defendant was armed with or used a weapon at the time of the commission of the crime.

(3) The victim was particularly vulnerable.

(4) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission.

(5) The defendant induced a minor to commit or assist in the commission of the crime.

(6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process.

(7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed.

(8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism.

(9) The crime involved an attempted or actual taking or damage of great monetary value.

(10) The crime involved a large quantity of contraband.

(11) The defendant took advantage of a position of trust or confidence to commit the offense.

(b) Facts relating to the defendant, including the fact that:

(1) The defendant has engaged in violent conduct which indicates a serious danger to society.

(2) The defendant's prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness.

(3) The defendant has served a prior prison term.

(4) The defendant was on probation or parole when the crime was committed.

(5) The defendant's prior performance on probation or parole was unsatisfactory.

(c) Any other facts statutorily declared to be circumstances in aggravation.

Rule 4.423. Circumstances in mitigation

Circumstances in mitigation include:

(a) Facts relating to the crime, including the fact that:

(1) The defendant was a passive participant or played a minor role in the crime.

(2) The victim was an initiator of, willing participant in, or aggressor or provoker of the incident.

(3) The crime was committed because of an unusual circumstance, such as great provocation, which is unlikely to recur.

(4) The defendant participated in the crime under circumstances of coercion or duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense.

(5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(6) The defendant exercised caution to avoid harm to persons or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim.

(7) The defendant believed that he or she had a claim or right to the property taken, or for other reasons mistakenly believed that the conduct was legal.

(8) The defendant was motivated by a desire to provide necessities for his or her family or self.

(9) The defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the victim of the crime; and the victim of the crime, who inflicted the abuse, was the defendant's spouse, intimate cohabitant, or parent of the defendant's child; and the facts concerning the abuse do not amount to a defense.

(b) Facts relating to the defendant, including the fact that:

(1) The defendant has no prior record, or an insignificant record of criminal conduct, considering the recency and frequency of prior crimes.

(2) The defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime.

(3) The defendant voluntarily acknowledged wrongdoing prior to arrest or at an early stage of the criminal process.

(4) The defendant is ineligible for probation and but for that ineligibility would have been granted probation.

(5) The defendant made restitution to the victim.

(6) The defendant's prior performance on probation or parole was satisfactory.

Rule 4.425. Criteria affecting concurrent or consecutive sentences

Criteria affecting the decision to impose consecutive rather than concurrent sentences include:

(a) [Criteria relating to crimes] Facts relating to the crimes, including whether or not:

- (1) The crimes and their objectives were predominantly independent of each other.
- (2) The crimes involved separate acts of violence or threats of violence.
- (3) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior.

(b) [Other criteria and limitations] Any circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than concurrent sentences, except (i) a fact used to impose the upper term, (ii) a fact used to otherwise enhance the defendant's prison sentence, and (iii) a fact that is an element of the crime shall not be used to impose consecutive sentences.

HYPOTHESIS # 4

- **CRIME:**

- P.C. § 459 - 2nd – felony - \$350 chain saw from Sears

- **PRIORS:**

- 2005: P.C. § 488 – whiskey and VOP
- 2004: VOP – drug test
- 2003: H&S § 11377(a) – misdemeanor
- 2002: P.C. § 459 - 1st (2 cts) - tools from garages – 5 years probation
- 2000: P.C. § 496, misdemeanor - credit cards - 3 yrs probation

● *PERSONAL DATA:*

- Married three years
- Age 40
- Seasonal work in construction
- Wife pregnant with first child

SENTENCING CHOICES

- ***ACTION:***

- Grant no relief
- Dismiss one strike
- Dismiss two strikes
- Dismiss two strikes
- Spec misd. § 17(b)

- ***RESULT:***

- 25 yrs to life
- 2 yrs, 8 mos - 4 - 6
- S/P – 16 - 2 - 3
- Probation, local jail
- Probation, local jail